

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
October 10, 2006 Session

**SENDIE STANFILL ET AL. v. JEFFREY HARDNEY ET AL.**

**Appeal from the Chancery Court for Davidson County  
No. 00-202-III Ellen Hobbs Lyle, Chancellor**

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**No. M2004-02768-COA-R3-CV - Filed September 27, 2007**

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This appeal involves a scheme to trick an elderly property owner into parting with her property without consideration. The property owner and two members of her family filed suit in the Chancery Court for Davidson County against four persons and one corporation, alleging that they had engaged in a civil conspiracy to obtain her property without adequate consideration and then to profit from the property by selling it at an inflated price and splitting the proceeds. Two of the four individual defendants filed bankruptcy petitions while the case was pending, and the claims against the remaining two individual defendants and the defendant corporation proceeded to a bench trial. The trial court determined that all defendants had been part of a civil conspiracy to defraud the property owner in violation of the Tennessee Consumer Protection Act and determined that the property owner's actual damages were \$67,500. After the property owner elected to receive treble damages, the trial court entered a judgment against the defendants for \$201,000.00 in damages, \$92,853.00 in attorney's fees, and \$7,173.40 in costs. The defendants assert on this appeal that the case became moot as a result of a pre-trial order and that the evidence preponderates against the trial court's finding that they were part of a civil conspiracy to defraud the property owner. We have determined that the case is not moot and that the evidence supports the trial court's finding that the defendants were part of a civil conspiracy to induce the property owner to part with her property without consideration.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed**

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which WILLIAM B. CAIN and PATRICIA J. COTTRELL, JJ., joined.

Thomas F. Bloom, Nashville, Tennessee, for the appellants, Greg Fitzgerald and American National Home Equity, Inc.

Stephen Adcox, Old Hickory, Tennessee, Pro Se.

James D.R. Roberts and Janet L. Layman, Nashville, Tennessee, for the appellees, Sendie Stanfill, Rheba Kershaw, and Courtney Stanfill.

## OPINION

### I.

In the fall of 1999, Sendie A. Stanfill (“Sendie Stanfill”<sup>1</sup>) owned a home on Burns Avenue in Nashville where she lived with her daughter, Rheba Kershaw, and her granddaughter, Courtney Stanfill. She also owned rental property on Pennington Avenue in Nashville. Sendie Stanfill managed the rental property following her husband’s death until 1987 when a heart attack caused her to turn over the management responsibilities to Ms. Kershaw. Ms. Kershaw also owned and managed rental property of her own on Meridian Street in Nashville. Ms. Kershaw was having a difficult time keeping both properties rented and in good repair.

Courtney Stanfill had been employed as an accountant following her graduation from college. She had saved \$25,000 and had decided to use the money to purchase a house. She mentioned her plans to Thomas Lanier, a college friend who worked as a banker and who was interested in real estate. Mr. Lanier referred Courtney Stanfill to Jeffrey Hardney, a real estate “promoter” with whom he had had prior dealings.

Mr. Hardney used the business name “HG Enterprises” to accomplish his “deals.” He identified property owners who had equity in the houses but who were in danger of losing their property to foreclosure. Mr. Hardney persuaded these owners to quitclaim their property to him and then rent the property for one year while they repaired their credit. He also promised that he would convey the property back to the owners at the end of the year. After acquiring title to the property, Mr. Hardney recruited a third party to buy the property at an inflated price. He also recruited a mortgage broker who was willing to finance the purchase and to arrange for a quick closing. Mr. Hardney would then use the proceeds from the transaction to pay off the existing mortgage and then split the remaining proceeds with the buyer and the mortgage broker.

It is unclear whether Mr. Hardney’s business model ever resulted in any legitimate business transactions. He often varied the players, especially as they became increasingly displeased with their dealings with him. What is clear is that Mr. Hardney and his business associates often played fast and loose with the documentation. They inaccurately recorded the consideration for the transactions; they had deeds notarized outside of the presence of the grantors; and they misrepresented the amount and types of existing liens on the properties.

After Mr. Hardney met Courtney Stanfill, he ingratiated himself with Sendie Stanfill and Ms. Kershaw. He became a frequent visitor in Sendie Stanfill’s home and acted like one of the family.<sup>2</sup> In addition to Mr. Lanier who already had a relationship with Courtney Stanfill, Mr. Hardney recruited Greg Fitzgerald, the owner of American National Home Equity (“American National”), and Stephen Adcox, one of Mr. Fitzgerald’s employees. Messrs. Fitzgerald and Adcox had previously participated in other “deals” put together by Mr. Hardney.

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<sup>1</sup> Because this matter involves both Sendie Stanfill and her granddaughter, Courtney Stanfill, we will refer to each by her full name to avoid confusion.

<sup>2</sup> As Sendie Stanfill puts it, “He just got to where we felt like he was just about one of us.”

Beginning in November 1999, Mr. Hardney began juggling a series of transactions that ultimately resulted in significant losses to Sendie Stanfill, Ms. Kershaw, and Courtney Stanfill. First, he convinced Courtney Stanfill to invest her \$25,000 with him rather than purchasing a house. Courtney Stanfill later lost money on that investment, but she did not tell her grandmother or her mother about her loss.

After Mr. Hardney learned that Ms. Kershaw was managing two rental properties, he invited her to form a partnership named Elm Hill Partners with him and Mr. Lanier. The three objectives of the partnership were (1) to arrange a sale of the Meridian Street property that would net Ms. Kershaw at least \$25,000, (2) to use the remaining proceeds from the Meridian Street property to fund future real estate transactions, and (3) to repair and restore the Pennington Avenue property. Mr. Hardney explained to Ms. Kershaw that while the Pennington Avenue property might need to be mortgaged to accomplish the repairs, it would be conveyed back to her unencumbered at the end of twelve months.<sup>3</sup>

On Saturday, December 11, 1999, Ms. Kershaw met Mr. Hardney at the Meridian Street property for a scheduled appraisal. The appraiser also inspected the Pennington Avenue property that morning but was unable to complete the appraisal because of the status of the repairs to the property. Following the appraisals, Mr. Hardney, Ms. Kershaw, and Mr. Lanier met for breakfast at a local restaurant where they discussed their anticipated business transactions. Sonya Robinson, Mr. Hardney's girlfriend, was also present.

On Monday December 13, 1999, Messrs. Hardney and Adcox prepared documents creating two partnerships that would be involved in the two transactions involving the Pennington Avenue property.<sup>4</sup> The first partnership, "Elm Hill Partners," consisted of Messrs. Hardney, Fitzgerald, and Adcox. The stated purpose of the partnership was "real estate acquisition for renovation and resale." Its address was the same as American National's address.<sup>5</sup> The second partnership, "HG Enterprises," consisted of Messrs. Hardney and Lanier and Ms. Kershaw. The address of this partnership was the same address where Mr. Hardney operated his business also called "HG Enterprises."

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<sup>3</sup>Mr. Hardney had a different version of his arrangement with Ms. Kershaw. According to Mr. Hardney, Ms. Kershaw was no longer interested in owning rental property. Therefore, he and Ms. Kershaw agreed to a "package deal" whereby both Ms. Kershaw's Meridian Street property and Sendie Stanfill's Pennington Avenue property would be used in a money-making venture to net Ms. Kershaw \$25,000. According to Mr. Hardney, he, Ms. Kershaw, and Mr. Lanier would be members of a partnership called HG Enterprises. Mr. Hardney would arrange for sales of the properties as per his usual course of business, and Mr. Lanier would play the role of buyer, if necessary.

<sup>4</sup>Due to the peculiarities of the mortgage industry, mortgage companies will typically fund a purchase-money mortgage faster than they will fund a refinancing mortgage. Accordingly, Messrs. Hardney and Adcox drew up paperwork for two partnerships so that the Pennington Avenue property could be "sold" from one to the other in order for the parties to the transaction to receive the proceeds on the same day as the sale.

<sup>5</sup>For reasons that Messrs. Fitzgerald, Hardney, and Adcox were unable to explain, Mr. Lanier handled bookkeeping for the partnership.

There is some disagreement regarding the next series of events. Later during the evening of December 13, 1999 or possibly on the following evening,<sup>6</sup> the parties met at Sendie Stanfill's home. Messrs. Hardney and Lanier arrived first, and Ms. Kershaw arrived a few minutes later. Ms. Kershaw testified that there were two reasons for the meeting. First, Messrs. Hardney and Lanier were going to use their "real estate expertise" to help Sendie Stanfill convey the Pennington Avenue property to Ms. Kershaw. The second purpose of the meeting was to formalize the HG Enterprises partnership and to discuss funding the real estate transactions with the proceeds from the sale of the Meridian Street property.

Messrs. Hardney and Lanier, and Ms. Kershaw spent the evening discussing business while Sendie Stanfill watched football. At some point, Sendie Stanfill overheard them talking about the Pennington Avenue property and inquired about their plans. Ms. Kershaw responded that she was having a difficult time keeping renters in the property and that she needed "some security." Ms. Kershaw stated that she needed the deed to the Pennington Avenue property. Sendie Stanfill responded that it had always been her intention to give the property to Ms. Kershaw and that she would do so immediately.

Sendie Stanfill had the deed to the Pennington Avenue property in her possession. Accordingly, Mr. Hardney told Sendie Stanfill that he could help her accomplish the transfer to Ms. Kershaw by signing a paper that he had brought with him. Accordingly, Sendie Stanfill signed the folded document that Mr. Hardney gave her without reading it. Sendie Stanfill did not know it at the time, but the document she signed was actually a quitclaim deed conveying the Pennington Avenue property to Elm Hill Partners, not to Ms. Kershaw.

After Sendie Stanfill signed the purported conveyance to Ms. Kershaw, Messrs. Hardney and Lanier, and Ms. Kershaw executed their partnership agreement. The agreement consisted of two unstapled pages that purported to create Elm Hill Partners with Messrs. Hardney and Lanier and Ms. Kershaw as the partners.<sup>7</sup> Ms. Kershaw objected to a provision on the second page of the agreement that permitted amending the agreement "by  $\frac{2}{3}$  vote of the partners." She scratched out the numerator "2," replaced it with "3," and initialed the change. Then all three partners signed the document. Ms. Kershaw requested a copy of the executed partnership agreement.

Mr. Hardney returned the executed document to his briefcase and removed a second document that also consisted of two unstapled pages. Ms. Kershaw did not read the first page of the second document but made the same alteration on its second page that she had made on the first document. According to Ms. Kershaw, she also handwrote on the back of the second page of the second document that she acknowledged that the Pennington Avenue property would be mortgaged by the partnership, if necessary, and that the property would be returned to her unencumbered at the end of twelve months. After all the documents were signed, Ms. Kershaw's copy of the partnership agreement was left on the table. Ms. Kershaw later placed it in a box with her other personal papers.

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<sup>6</sup> Messrs. Hardney and Lanier recalled that the meeting occurred on December 13, 1999. Sendie Stanfill, Ms. Kershaw, and Courtney Stanfill recalled that the meeting occurred on December 14, 1999.

<sup>7</sup> Messrs. Hardney and Lanier later insisted that this agreement did not establish Elm Hill Partners but rather HG Enterprises.

Ms. Kershaw asserts that, either before she signed the second document or at some time thereafter, Mr. Hardney, unbeknownst to her, switched the pages of the partnership agreements and substituted the front pages of the Elm Hill Partners agreement with the HG Enterprises partnership agreement. As a result, Ms. Kershaw was, at least on paper, a member of the HG Enterprises partnership, even though she believed she was a member of Elm Hill Partners. Neither Mr. Hardney nor Mr. Lanier have produced a copy of their agreement with Ms. Kershaw. Although all three agree that they executed the handwritten addendum on the back of Ms. Kershaw's copy of the partnership agreement, the original document that Ms. Kershaw produced from her files contains no such agreement.

Messrs. Hardney, Lanier, Fitzgerald, and Adcox acted quickly with regard to the Pennington Avenue property. Mr. Lanier instructed his secretary, Chantelle Patton, to notarize and date the quitclaim deed outside of Sendie Stanfill's presence. Elm Hill Partners then agreed to sell the Pennington Avenue property to Mr. Lanier for \$67,500. Mr. Adcox helped Mr. Lanier fill out a mortgage application to obtain financing for the purchase.<sup>8</sup> Mr. Fitzgerald wrote Mr. Hardney and Mr. Lanier checks for \$3,500 each. Additionally, Mr. Fitzgerald agreed to advance Mr. Lanier the closing costs for the transaction.

At some point on or before December 27, 1999, the deed to the Pennington Avenue property was delivered to Transcontinental Title and Escrow ("Transcontinental Title"). After noticing that the consideration listed for Ms. Sendie Stanfill's transfer of the property was suspiciously low,<sup>9</sup> an employee of Transcontinental Title telephoned Sendie Stanfill to verify the authenticity of the transaction. During the course of this conversation, Sendie Stanfill learned that someone had applied for a mortgage on the Pennington Avenue property. Concerned at this turn of events, Sendie Stanfill relayed to Ms. Kershaw the substance of title company's telephone call and requested her to retrieve the deed she had signed from the title company.

However, before Ms. Kershaw could reach the title company, Mr. Fitzgerald learned that the deed to the Pennington Avenue property had not yet been recorded and that it had been mistakenly left at Transcontinental Title. He dispatched Mr. Adcox to retrieve the title. Mr. Adcox won the race to the title company, and when Ms. Kershaw arrived at Transcontinental Title, she was informed that the deed had already been picked up. While at the title company, Ms. Kershaw obtained a copy of the Elm Hill Partners agreement and learned, much to her surprise, that she was not a member of the partnership. Ms. Kershaw immediately contacted Mr. Hardney who, according to Ms. Kershaw, feigned surprise that the deed was incorrect and assured her that Elm Hill Partners would not record the erroneous deed and that he would correct the deed to reflect her name as the grantee. The very next day, despite Mr. Hardney's assurances to Ms. Kershaw, Mr. Adcox recorded the deed conveying the property to Elm Hill Partners.

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<sup>8</sup>Evidence in the record suggests that this application was created during business hours on December 14, 1999, which, according to the plaintiffs' version of events, would have been before Messrs. Hardney and Lanier procured the deed from Sendie Stanfill.

<sup>9</sup>The text of the deed lists the consideration as ten dollars. The statement of consideration notarized by Mr. Adcox states actual consideration as zero dollars.

On January 4, 2000, Ms. Kershaw participated in the closing of the sale of the Meridian Street property, trusting Mr. Hardney's earlier assurances that the problems with the Pennington Avenue property would be straightened out. Ms. Kershaw received \$25,000 from the sale of the Meridian Street property. Ms. Kershaw was unaware that while she was closing the sale of the Meridian Street property, Elm Hill Partners was closing the sale of the Pennington Avenue property to Mr. Lanier. On January 5, 2000, Messrs. Hardney, Adcox, Fitzgerald, and Lanier divided the \$67,500 in proceeds from this transaction among themselves.<sup>10</sup>

When Sendie Stanfill attempted to pay the property taxes on the Pennington Avenue property in mid-January 2000, she learned that the property had been sold and mortgaged. On January 20, 2000, Sendie Stanfill and Ms. Kershaw filed a complaint in the Chancery Court for Davidson County against Messrs. Hardney, Lanier, Fitzgerald, and Adcox and American National.<sup>11</sup> They sought rescission of the deed conveying the Pennington Avenue property to Elm Hill Partners and dissolution of the partnerships involved in the property's sale. On January 21, 2000, the trial court issued a temporary restraining order preventing any of the defendants from further transferring or encumbering the property. On March 2, 2000, the trial court denied a request for a preliminary injunction along the same lines but, based upon facts regarding the HG Enterprises partnership stipulated to by Messrs. Hardney and Lanier, the trial court ordered Mr. Lanier to transfer ownership of the Pennington Avenue property to HG Enterprises. On May 24, 2000, Mr. Lanier quitclaimed the property to the HG Enterprises partnership, but the property was now encumbered by the \$67,500 mortgage.

Sendie Stanfill and Ms. Kershaw filed an amended complaint on March 21, 2000, adding Courtney Stanfill as a plaintiff with claims related to her transactions with Mr. Hardney. They filed a second amended complaint on January 30, 2002, adding causes of action for civil conspiracy to defraud and violations of the Tennessee Consumer Protection Act.<sup>12</sup> Mr. Hardney filed counterclaims, alleging breach of contract, breach of fiduciary duty, and inducement to breach. The matter proceeded to a bench trial on May 17, 2004.<sup>13</sup> Mr. Fitzgerald and American National were represented by counsel. Mr. Adcox appeared pro se.

In addition to the testimony of the parties, the trial court heard the testimony of George Christopher Armstrong, a mortgage broker and finance and economics instructor called by the plaintiffs. Mr. Armstrong described irregularities in American National's handling of Mr. Lanier's loan to purchase the Pennington Avenue property. Among these irregularities was Mr. Fitzgerald's

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<sup>10</sup>Mr. Fitzgerald also received a commission for arranging for the mortgage, and he had secured repayment of the \$7,000 he had earlier paid to Messrs. Hardney and Lanier by claiming a lien on the property during the closing of the purchase.

<sup>11</sup>The complaint also named Sonia Robinson, Chantelle Patton, and Stacey Lanier, Thomas Lanier's wife, as defendants. All these parties were granted summary judgment and are not parties to this appeal.

<sup>12</sup>Tenn. Code Ann. § 47-18-101 to -116 (2001 & Supp. 2005).

<sup>13</sup>Mr. Lanier was dismissed as a defendant in 2002 due to his bankruptcy. Mr. Hardney filed for bankruptcy protection on the eve of trial. The trial court stayed the claims against Mr. Hardney but allowed him to be questioned as a witness at trial.

improper advance of closing costs to Mr. Lanier and his improper claim to have a lien on the property for this advance.

The trial court filed its memorandum and order on June 22, 2004. It concluded that Messrs. Fitzgerald and Adcox and American National<sup>14</sup> had engaged in a civil conspiracy with Messrs. Hardney and Lanier to defraud Sendie Stanfill in violation of the Tennessee Consumer Act.<sup>15</sup> The trial court determined that Sendie Stanfill's actual damages amounted to \$67,500.<sup>16</sup> After concluding that Messrs. Fitzgerald and Adcox had acted knowingly and wilfully, the court gave Sendie Stanfill the option of receiving either treble damages or punitive damages. Sendie Stanfill elected to receive treble damages.<sup>17</sup> Thereafter, in an order filed on August 30, 2004, the trial court awarded Sendie Stanfill \$92,853.00 in attorney's fees and \$7,173.40 in costs. Messrs. Fitzgerald and Adcox and American National have appealed.

## II.

### THE MOOTNESS OF SENDIE STANFILL'S CLAIM

Messrs. Fitzgerald and Adcox and American National assert that Sendie Stanfill's claims against them became moot when the trial court entered its March 2, 2000 order directing Mr. Lanier to convey the Pennington Avenue property back to HG Enterprises. They argue that this order afforded Sendie Stanfill all the relief she had requested and, therefore, that her claims became moot because there was no other relief the courts could grant her.<sup>18</sup> We find no merit in this argument.

Throughout this litigation, Sendie Stanfill sought to recover the unencumbered title to the Pennington Avenue property by asking the court to rescind the deed by which she conveyed the property to Elm Hill Partners, as well as the deed by which Elm Hill Partners conveyed the property to Mr. Lanier. Early in the litigation, Sendie Stanfill and her daughter and granddaughter sought a temporary injunction to prevent Messrs. Hardney, Lanier, Adcox, and Fitzgerald from further transferring or encumbering the property while the lawsuit was pending. The trial court denied the application, but in an order entered on March 2, 2000, the court ordered:

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<sup>14</sup>The trial court's original order did not contain findings regarding American National's liability. The trial court later corrected this omission.

<sup>15</sup>The trial court also determined that Ms. Kershaw and Courtney Stanfill have not proved their claims. Neither Ms. Kershaw nor Courtney Stanfill have appealed.

<sup>16</sup>Although Sendie Stanfill had originally requested rescission of the deed, the Pennington Avenue property had been foreclosed upon in 2002 during the course of litigation, and thus rescission was not a viable option.

<sup>17</sup>Inexplicably, the trial court calculated Sendie Stanfill's treble damages to be \$201,000, rather than \$202,500. Sendie Stanfill has not taken issue with this error.

<sup>18</sup>A case will be considered moot if it no longer serves as a means to provide some sort of judicial relief to the prevailing party. *McCanless v. Klein*, 182 Tenn. 631, 637, 188 S.W.2d 745, 747 (1945); *Alliance for Native Am. Indian Rights in Tenn., Inc. v. Nicely*, 182 S.W.3d 333, 338 (Tenn. Ct. App. 2005).

3. While the property located at 2615 Pennington Avenue, Nashville, TN is currently in the name of Thomas Lanier, pursuant to the terms of the H.G. Enterprises partnership agreement, he [Mr. Lanier] shall deed the property to H.G. Enterprises;
4. Under the terms of the H.G. Enterprises partnership agreement, H.G. Enterprises cannot sell or otherwise transfer the property located at 2615 Pennington Avenue for a period of one year from its acquisition, at which time H.G. Enterprises shall deed the property, unencumbered, to Rheba Kershaw;
5. While the Pennington Avenue property is a part of H.G. Enterprises, H.G. Enterprises shall refurbish, and use reasonable efforts to lease the property.

Mr. Lanier complied with the order by executing a quitclaim deed conveying the Pennington Avenue property back to HG Enterprises. However, by that time, the property was already encumbered with a mortgage securing Mr. Lanier's loan. The property was never transferred unencumbered back to Ms. Kershaw or to Sendie Stanfill. In January 2002, after Mr. Lanier defaulted on his loan, the holder of the mortgage foreclosed on the property and later sold it to a third party.

This case would have become moot had the Pennington Avenue property been returned unencumbered to either Ms. Kershaw or to Sendie Stanfill. However, it was not returned, and following the foreclosure, it could never have been returned unencumbered. The effect of the foreclosure was to render the equitable remedy of rescission unavailable. With no equitable remedies available, Sendie Stanfill's only remaining legal remedy was her general request for damages.

We have determined that the March 2, 2000 order did not render this case moot because neither Sendie Stanfill nor Ms. Kershaw received the unencumbered title to the Pennington Avenue property as a result of the order. Despite the entry of the March 2, 2000 order, Sendie Stanfill had not received all the relief she requested. She was still entitled to recover damages if she could prove the existence of a civil conspiracy to induce her to convey the Pennington Avenue property to Elm Hill Partners by tricking her into believing that she was conveying the property to Ms. Kershaw.

### **III.**

#### **THE ADEQUACY OF THE EVIDENCE THAT MESSRS. FITZGERALD AND ADCOX AND AMERICAN NATIONAL KNEW ABOUT MR. HARDNEY'S SCHEME**

Neither Mr. Fitzgerald, Mr. Adcox, nor American National take issue on this appeal with the trial court's determination that Mr. Hardney committed common-law fraud and violated the Tennessee Consumer Protection Act by inveigling the deed to the Pennington Avenue property away from Sendie Stanfill for no consideration. However, they insist that the evidence preponderates against the trial court's conclusion that they knew of and joined in Mr. Hardney's scheme. We have



determined that the evidence supports the trial court's conclusion that Messrs. Fitzgerald and Adcox and American National were part of a civil conspiracy to obtain the deed to the Pennington Avenue property under false pretenses.

#### A.

A civil conspiracy is an agreement between two or more persons to do an unlawful act or to do a lawful act in an unlawful way. *Trau-Med of Am., Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 703 (Tenn. 2002); *Chenault v. Walker*, 36 S.W.3d 45, 52 (Tenn. 2001). Participating in a civil conspiracy is not an independent tort. *Watson's Carpet & Floor Covering, Inc. v. McCormick*, No. M2004-02750-COA-R3-CV, 2007 WL 134132, at \*8 (Tenn. Ct. App. Jan. 18, 2007) *perm. app. denied* (Tenn. May 14, 2007). Rather, it is a derivative claim that requires the existence of an underlying tort or wrongful act committed by one or more of the conspirators in furtherance of the conspiracy. *Forrester v. Stockstill*, 869 S.W.2d 328, 330 (Tenn. 1994); *Tenn. Publ'g Co. v. Fitzhugh*, 165 Tenn. 1, 5-6, 52 S.W.2d 157, 158 (1932); *Levy v. Franks*, 159 S.W.3d 66, 82 (Tenn. Ct. App. 2004).

A civil conspiracy claim is a means for establishing vicarious liability. *Watson's Carpet & Floor Covering, Inc. v. McCormick*, 2007 WL 134132, at \*8. Its function is to extend liability in tort beyond the active wrongdoer to those who planned, assisted, or encouraged the wrongdoer's acts. *Adcock v. Brakegate Ltd.*, 645 N.E.2d 888, 894 (Ill. 1994). Thus, the acts of one conspirator are attributable to the other conspirators. See W. Page Keeton, *Prosser and Keeton on the Law of Torts* § 46, at 323 (5th ed. 1984) ("*Prosser & Keeton*"). Once the evidence establishes the existence of a civil conspiracy, the members of the conspiracy are jointly and severally liable for all the damages caused by the other conspirators, even if they did not commit tortious or wrongful acts themselves. *Trau-Med of Am., Inc. v. Allstate Ins. Co.*, 71 S.W.3d at 703; *Chenault v. Walker*, 36 S.W.3d at 52; *Dale v. Thomas H. Temple Co.*, 186 Tenn. 69, 90-91, 208 S.W.2d 344, 354 (1948); Restatement (Second) of Torts § 876 cmt. a (1979); *Prosser & Keeton*, § 46, at 323.

The elements of a civil conspiracy claim are: (1) an agreement between two or more persons, (2) to engage in some concerted action either for an unlawful purpose or for a lawful purpose by unlawful means, (3) the commission of a tortious or wrongful act by one or more of the conspirators, and (4) resulting injury or damage to person or property. *Kincaid v. Southtrust Bank*, 221 S.W.3d 32, 38 (Tenn. Ct. App. 2006); *Kirksey v. Overton Pub, Inc.*, 739 S.W.2d 230, 236-37 (Tenn. Ct. App. 1987).

The conspirators' agreement need not be explicit or formal. A tacit agreement will suffice. *Chenault v. Walker*, 36 S.W.3d at 52; *Dale v. Thomas H. Temple Co.*, 186 Tenn. at 90, 208 S.W.2d at 354. The agreement may be implied from the conspirators' conduct itself. Restatement (Second) of Torts § 876 cmt. a. While each conspirator must share an intent to accomplish the common purpose, *Chenault v. Walker*, 36 S.W.3d at 52, it is not necessary for each conspirator to have knowledge of the details of the conspiracy. *Dale v. Thomas H. Temple Co.*, 186 Tenn. at 90, 208 S.W.2d at 353. A conspirator may be found liable if he or she understands the general objectives of the scheme, accepts them, and agrees, either explicitly or implicitly, to do his or her part to further them. *Banco Popular N. Am. v. Gandi*, 876 A.2d 253, 263 (N.J. 2005).

Conspiracies, by their very nature, are formed in secret. *Am. Diamond Exchange, Inc. v. Aplert*, 920 A.2d 357, 369 (Conn. App. Ct. 2007). In the absence of testimony of one of the conspirators, it is unlikely that direct evidence of a conspiratorial agreement will exist. *Hampton v. Hanrahan*, 600 F.2d 600, 620-21 (7th Cir. 1979) *rev'd in part on other grounds*, 446 U.S. 754, 100 S. Ct. 1987 (1980); *Bd. of Educ. of Asbury Park v. Hoek*, 183 A.2d 633, 646-47 (N.J. 1962). It follows that civil conspiracies are rarely proven directly. They are more often established using circumstantial evidence and inferences drawn from the evidence, coupled with common-sense knowledge of the behavior of persons in similar circumstances. See *Int'l Bankers Life Ins. Co. v. Holloway*, 368 S.W.2d 567, 581-82 (Tex. 1963). Thus, fact-finders may consider the nature of the acts themselves, the relationship of the parties, the interests of the conspirators, and other circumstances. *Mohave Elec. Coop., Inc. v. Byers*, 942 P.2d 451, 465 (Ariz. Ct. App. 1997). However, circumstantial evidence regarding the existence of a civil conspiracy must create more than a suspicion or conjecture that a conspiracy exists. It must enable reasonable persons to infer that two or more persons jointly assented to accomplish an unlawful purpose or to accomplish a lawful purpose using unlawful means. *Dove v. Harvey*, 608 S.E.2d 798, 801 (N.C. Ct. App. 2005); *Moore v. Weinberg*, 644 S.E.2d 740, 750 (S.C. Ct. App. 2007); *Alford v. Thornburg*, 113 S.W.3d 575, 588 (Tex. App. 2003).

Civil conspiracy claims must be pleaded with some degree of specificity. *Kincaid v. Southtrust Bank*, 221 S.W.3d at 38; *McGee v. Best*, 106 S.W.3d 48, 64 (Tenn. Ct. App. 2002). The party seeking to establish the existence of a civil conspiracy must do so by a preponderance of the evidence. *Dale v. Thomas H. Temple Co.*, 186 Tenn. at 90, 208 S.W.2d at 354; *Chilhowee Trailer Sales, Inc. v. Int'l Christian Church*, No. E2002-00901-COA-R3-CV, 2003 WL 2010741, at \*4 (Tenn. Ct. App. Apr. 29, 2003) *perm. app. denied* (Tenn. Oct. 6, 2003).

## **B.**

No issue is raised on this appeal with regard to the existence of sufficient evidence to support two of the four elements of a civil conspiracy. There is no dispute that Mr. Hardney committed fraud by inducing Sendie Stanfill to convey the Pennington Avenue property to the Elm Hill Partnership without consideration. In plain terms, he tricked Sendie Stanfill into believing that she was conveying the property to her daughter as a gift. There is likewise no dispute that Sendie Stanfill was injured by this fraudulent act because she lost the free and unencumbered title to her property.

Messrs. Fitzgerald and Adcox and American National insist that Sendie Stanfill failed to introduce sufficient evidence to establish the remaining two elements of a civil conspiracy. They argue that the record contains no evidence that they agreed with Messrs. Hardney and Adcox to obtain Sendie Stanfill's property by unlawful means. While they concede that they entered into a partnership agreement with Mr. Hardney to acquire distressed or foreclosed properties and to resell them at a profit, they assert that they neither knew about nor agreed to Mr. Hardney's fraudulent scheme to separate Sendie Stanfill from her property.

Messrs. Fitzgerald and Adcox were not present when Mr. Hardney tricked Sendie Stanfill into signing the deed conveying the Pennington Avenue property to the Elm Hill Partnership. The record contains no direct evidence that Messrs. Fitzgerald and Adcox knew, either before or after the fact, precisely how Mr. Hardney planned to obtain the deed to the property from Sendie Stanfill.

However, the evidence regarding the relationship between Messrs. Hardney, Fitzgerald, Adcox, and Lanier and the outcome of the transaction support the trial court's conclusion that the four men were part of a civil conspiracy to fraudulently induce Sendie Stanfill to part with the Pennington Avenue property without consideration.

Messrs. Fitzgerald and Adcox were more than casually familiar with Mr. Hardney and his business tactics. Prior to the transactions involving the Pennington Avenue property, they had participated in one or more of Mr. Hardney's "deals" by arranging for the mortgage financing for the buyers brought to them by Mr. Hardney. In fact, Mr. Fitzgerald admitted to paying Mr. Hardney questionable "bird dog fees" for bringing him business.

The relationship among Messrs. Hardney, Fitzgerald, and Adcox became even closer on December 13, 1999, when they formed the Elm Hill Partnership as a vehicle for more of Mr. Hardney's "deals." They understood and anticipated that the Elm Hill Partnership would obtain the title to the distressed or bankrupt properties identified by Mr. Hardney and would act as the seller of the property to the "buyers" procured by Mr. Hardney. As the seller, the partnership would then receive the proceeds from the sale of the property, and these proceeds would, in turn, be divided among the partners.

On the very day that Messrs. Hardney, Fitzgerald, and Adcox formed their partnership, Mr. Hardney fraudulently induced Sendie Stanfill to convey her Pennington Avenue property to the partnership without consideration. Two weeks later, the partnership agreed to sell the property to Mr. Lanier for the inflated price of \$67,500, and Mr. Fitzgerald agreed to help Mr. Lanier obtain a mortgage loan to finance the purchase and to loan Mr. Lanier the funds for the closing costs. On January 4, 2000, Mr. Lanier received an American National check for the precise amount of funds required at the closing and then proceeded to close the sale. The Elm Hill Partnership received \$55,251.26 at the closing. Within days, at least \$46,500 of the proceeds were disbursed. Each of the partners, Messrs. Hardney, Fitzgerald, and Adcox, received \$11,629. For some reason never precisely explained in the record, Mr. Lanier also received \$11,629 even though he was neither a partner nor a creditor of the partnership.

Some largely ineffective efforts were made to improve the Pennington Avenue property after the disbursement of funds to Messrs. Hardney, Fitzgerald, Adcox, and Lanier. However, Mr. Lanier eventually defaulted on the mortgage loan by failing to make the mortgage payments. The property was then foreclosed on and sold to a third party.

Messrs. Hardney, Fitzgerald, Adcox, and Lanier were questioned closely about their relationships and the transactions involving the Pennington Avenue property. Their collective obfuscation, self-contradictions, and convenient memory lapses eventually prompted the trial court to conclude that all of them, particularly Messrs. Fitzgerald and Adcox lacked credibility. The court specifically stated that it "did not believe Greg Fitzgerald when he denied that he knew Ms. Sendie Stanfill was being defrauded." Appellate courts customarily accord considerable deference to a trial court's findings regarding the credibility of the witnesses and the weight to be given to their testimony. *Interstate Mech. Contractors, Inc. v. McIntosh*, \_\_ S.W.3d \_\_, \_\_, 2007 WL 1865581, at \*3 (Tenn. 2007); *In re M.L.P.*, 228 S.W.3d 139, 143 (Tenn. Ct. App. 2007). After reviewing the testimony of Messrs. Hardney, Fitzgerald, Adcox, and Lanier, we find ample basis for

the trial court's conclusion that the testimony of both Mr. Fitzgerald and Mr. Adcox is not worthy of belief.

Based on our de novo review of the record, we have determined that the evidence does not preponderate against the trial court's finding that Messrs. Fitzgerald and Adcox were part of a civil conspiracy orchestrated by Mr. Hardney to fraudulently induce Sendie Stanfill to part with the Pennington Avenue property without consideration. The direct evidence presented by Sendie Stanfill, together with the inferences reasonably drawn from this evidence, are sufficient to enable reasonable persons to conclude that Messrs. Fitzgerald and Adcox jointly assented with Messrs. Hardney and Lanier to accomplish a lawful purpose – acquiring the Pennington Avenue property – through unlawful means. Accordingly, we affirm the trial court's conclusion that Messrs. Fitzgerald and Adcox were members of a civil conspiracy to defraud Sendie Stanfill.

#### IV.

We affirm the judgment against Messrs. Fitzgerald and Adcox<sup>19</sup> and remand the case to the trial court for whatever further proceedings consistent with this opinion may be required. We tax the costs of this appeal jointly and severally to Greg Fitzgerald and his surety and to Stephen Adcox for which execution, if necessary, may issue.

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WILLIAM C. KOCH, JR., P.J., M.S.

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<sup>19</sup>Mr. Adcox raised several other issues in his pro se brief. These issues are subsumed in our discussion regarding the mootness of this appeal and the evidentiary support for the trial court's conclusion that Messrs. Fitzgerald and Adcox were part of a civil conspiracy to defraud Sendie Stanfill.